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7
8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

10 In re:

11 JOSE LOPES GOMES, and
12 CAMILA GOMES,
d/b/a JOSE GOMES & FAMILY DAIRY

13 Debtor(s).

Case No. 10-14797-B-12

Chapter 12

D.C. No. PLF-1

Emergency Hearing

Date: May 13, 2010

Time: 3:00 PM

Place: Dept. B, Ctrm. 12, 5th Floor

United States Courthouse

2500 Tulare St., Fresno, California

Judge: Hon. W. Richard Lee

Final Hearing

Date: June 10, 2010

Time: 3:00 PM

Place: Dept. B, Ctrm. 12, 5th Floor

United States Courthouse

2500 Tulare St., Fresno, California

Judge: Hon. W. Richard Lee

22 **MOTION FOR AUTHORITY TO USE CASH COLLATERAL**

23 TO THE HONORABLE W. RICHARD LEE, JUDGE OF THE UNITED STATES
24 BANKRUPTCY COURT:

JOSE LOPES GOMES and CAMILA GOMES, d/b/a Jose Gomes & Family Dairy, Debtors herein (hereinafter collectively “Debtor”), hereby move this Court seeking an Order approving the use of cash collateral as follows:

Summary of Relief Requested

The grounds for this Motion are that the cash collateral sought to be used constitutes Debtor’s funds to feed the Debtor’s cows, pay Debtor’s employees and suppliers and otherwise continue the business and preserve the value of the estate’s assets. Unless the Court permits use of the cash collateral, the Debtor will be unable to continue the Debtor’s dairy business. The Debtor immediately needs the use of the cash collateral to maintain the reorganization process. Any inability to maintain ongoing services will affect the value of the estate, which will create immediate and irreparable problems for the Debtor and Creditors.

The cash collateral stems from a security interest in milk, milk products, livestock, feed inventory, and equipment now owned or hereafter acquired, all accounts and general intangibles now outstanding or hereafter arising, and all cash and noncash proceeds of any of the foregoing of the Debtor.

Pursuant to Bankruptcy Rule 4001(d)(1), this Motion has been served by mail on all creditors claiming an interest in cash collateral, all secured creditors, the Debtor, the taxing agencies required by LBR 2002-1, the U.S. Trustee’s Office, and any and all persons who have requested special notice by filing the appropriate documents with the Bankruptcy Court.

The Motion is based upon the Notice of Motion and Declaration of Elizabeth Gomes Rizo, the files, pleadings and orders on file on this Chapter 12 case, such other and further evidence as may properly come before the court, and the following points and authorities:

Statement of Facts

1 1. Debtor is a sole proprietorship and is involved in the dairy business.

2 2. The affected secured creditors are WALTER H. JENSEN CATTLE CO., INC.
3 (hereinafter “Jensen”) and ASSOCIATED FEED & SUPPLY CO. (hereinafter “AFS”)
4 (Jensen and AFS are collectively referred to hereinafter as “Secured Creditor”) have security
5 interests in milk, milk products, livestock, feed inventory, and equipment now owned or
6 hereafter acquired, all accounts and general intangibles now outstanding or hereafter arising,
7 and all cash and noncash proceeds of any of the foregoing of the Debtor.

8 3. Jensen’s UCC-1 was the first recorded and Jensen is owed approximately
9 \$908,000 in total. Jensen is only partially secured due to the value of Debtor’s personal
10 property. AFS is owed approximately \$17,482.77, none of which is secured due to the value
11 of Debtor’s personal property.

12 4. In order to continue to operate pending Plan Confirmation, Debtor needs to
13 have use of cash collateral. Debtor’s proposed monthly budget is included in the declaration
14 of Elizabeth Gomes Rizo in Support of Motion for Authority to Use Cash Collateral. This
15 budget is believed to be an accurate depiction of the anticipated revenues and expenses for
16 the subject period.

17 5. Through the Motion, Debtor seeks authority to use cash collateral of Secured
18 Creditor as described above. Debtor seeks authority to use the cash collateral to provide
19 Debtor with the funding needed to operate and maintain the business and pay critical
20 expenses during the pendency of the Chapter 12 case. In order to maintain and preserve the
21 going concern value of the business, it is critical that there be no disruption in operations.
22 Debtor has been unable to obtain financing with unsecured credit pursuant to Bankruptcy
23 Code Section 364(a) or (b) allowed as an administrative expense under Bankruptcy Code
24

1 Sections 503(b)(1), or secured credit pursuant to Bankruptcy Code Section 364(c), or on
2 more favorable terms from any other sources.

3 6. Denial of the Motion does not benefit any creditor constituency but would
4 cause significant harm to the business operations as the uses will fund the reorganization
5 process.

6 7. Debtor requests that the Court authorize use of cash collateral for the subject
7 period, which funds constitute cash collateral of the Secured Creditor, to pay liquidation
8 expenses, operate the business, and otherwise continue business operations as set forth in the
9 budget.

10 8. Pursuant to Bankruptcy Code Sections 361 and 363, as adequate protection for
11 the decline and value of the Secured Creditor's collateral resulting from such use, Debtor will
12 provide the Secured Creditor with a replacement lien.

13 9. By this Motion, Debtor seeks to grant replacement liens to the extent cash
14 collateral is actually used. Debtor is unaware of any other creditors having liens or security
15 interest in the subject cash collateral; however, Debtor seeks authority to use collateral of any
16 such creditor, if any, provided the creditor was served with notice of this Motion. Debtor
17 alleges that the requested use of cash collateral is for and in the best interests of the estate.

18 **Discussion**

19 10. The Debtor's use of property in the Chapter 12 bankruptcy estate is governed
20 by Section 363 of the Bankruptcy Code. Section 363(c)(1) provides in relevant part:

21 If the business of the debtor is authorized to be operated under section 721, 1108,
22 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee
23 may enter into transactions, including the sale or lease of property of the estate, in
24 the ordinary course of business, without notice or a hearing, and may use property
of the estate in the ordinary course of business without notice or a hearing.

1 11. Section 363(c)(2) establishes a special requirement, however, for the use of
2 cash collateral. Cash collateral is defined as “cash, negotiable instruments, documents of
3 title, securities, deposit accounts, or other cash equivalents whenever acquired in which the
4 estate and an entity other than the estate have an interest...” 11 U.S.C. § 363(a). Section
5 363(c)(2) permits the use of cash collateral under subsection (c)(1) only if one of two
6 alternative circumstances exist:

7 (A) each entity that has an interest in such cash collateral consents; or

8 (B) the court, after notice and a hearing, authorizes such use, sale, or lease in
9 accordance with the provisions of this section.

10 In accordance with Rule 4001(d)(1), the Debtor has served the Motion on all creditors
11 claiming an interest in cash collateral, all secured creditors, the Debtor, the taxing agencies
12 required by LBR 2002-1, the U.S. Trustee’s Office, and any and all persons who have
13 requested special notice by filing the appropriate documents with the Bankruptcy Court.
14 Under the circumstances, it is submitted that the notice with respect to this Motion is proper,
15 and the court should approve the requested use of cash collateral.

16 **Conclusion**

17 WHEREFORE, the Debtor respectfully requests the entry of an order: (i) approving
18 the use of cash collateral on an interim basis at the initial hearing; (ii) approving the use of
19 cash collateral on a final basis at a hearing to be scheduled; (iii) authorizing the use of cash
20 collateral on terms prescribed by the Court, and (iv) granting such other and further relief as
21 this court deems just and proper.

22 Date: 5/10/2010

23 LAW OFFICES OF PETER L. FEAR
24 By: /s/ Peter L. Fear
 Peter L. Fear